

COMMONWEALTH OF MASSACHUSETTS

BOARD OF REGISTRATION IN MEDICINE

POLICY 94 – 002

(ADOPTED JANUARY 26, 1994)

PHYSICIAN HEALTH AND COMPLIANCE PROGRAM

INTRODUCTION

In 1988, the Board of Registration in Medicine ("the Board") adopted its Chemically Dependent Physician Policy. This policy acknowledges that, in many cases, a physician who is chemically dependent can be rehabilitated and return to active practice while being monitored by means of a probation agreement. Through probation, the Board can ensure that the public will be protected while at the same time support the physician through a structured recovery process. Over the course of the five years since this policy was adopted, it has proven to be successful. During this period as well, the probation concept has been extended on a limited, case by case basis to other areas.

PHYSICIAN HEALTH AND COMPLIANCE PROGRAM

BOARD COUNSEL FOR PHYSICIAN HEALTH AND COMPLIANCE

Given the success of the Chemically Dependent Physician Policy, the Board has determined that the physician and consumer community would be best served by a further commitment by the Board in this area. To that end, the Board has created the position of Board Counsel for Physician Health and Compliance and placed the position outside of the Enforcement Division.

In addition to administering the Physician Health and Compliance Program, Board Counsel is responsible for assisting the Board in policy development, advising the Board in certain disciplinary matters, acting as a liaison between the Board and all parties

concerned in probationary matters and serving as a hearing officer in some cases and resource in all cases involving physician health or compliance issues. Board Counsel, who is part of the Legal Unit and reports to the General Counsel, serves as advisor to the Board and as a resource to physicians and not as an adversary in Board actions.

PROCEDURE

The vehicles for discipline and probation as outlined in the Board's regulations and Chemically Dependent Physician Policy remain unchanged. The creation of the Physician Health Program and the position of Board Counsel for Physician Health and Compliance, however, necessitate some clarification of the process and assignment of responsibility for these cases.

In those cases deemed to be appropriate for a probationary period, the following guidelines apply:

APPROVAL OF MONITORING AGREEMENTS

Licensing

When a physician with a history of substance abuse applies for a full or a limited license, the Board may condition licensure upon the applicant entering into a monitoring agreement. These agreements are processed by Board Counsel and are presented to the Licensing Committee. The Licensing Committee will then forward the matter to the full Board with a recommendation regarding licensure and either a Probation Agreement or Letter of Agreement. The Board must meet as Complaint Committee, however, in order to vote to accept a Letter of Agreement.

Complaints and Statutory Reports

- **Letter of Agreement**

All self-reports of substance abuse by physicians who are not in monitoring agreements with the Board or Complaint Committee that do not appear to contain allegations of patient harm or risk of patient harm will be processed by Board Counsel and will not be docketed in the Enforcement Unit. If the physician self-reported his or her substance abuse and there are no allegations of patient harm or risk of patient harm, the Complaint Committee may give the physician the opportunity to enter into a Letter of Agreement (using the Model Letter of Agreement adopted by the Board on April 11, 1989).

During the course of Board Counsel's inquiry, if allegations of patient harm or risk of patient harm are uncovered, then the matter will be referred to the Enforcement Unit for processing following the guidelines contained in the Board's Chemically

Dependent Physician Policy. The Enforcement Unit will continue to investigate and process all reports or complaints of physician impairment, including self-reports of chemical dependency that involve physicians who are not in monitoring agreements with the Board or the Complaint Committee, when there are allegations of patient harm or risk of patient harm.

- **Assurance of Discontinuance**

If the physician did not self-report or there are allegations of patient harm or risk of patient harm the matter will be investigated and processed by the Enforcement Unit. Following its review, the Complaint Committee may forward the matter to the full Board for consideration at the next Board meeting with a recommendation for disposition. If the physician did not self-report but there are no allegations of patient harm or risk of patient harm, then the Board may offer the physician the opportunity to enter into an Assurance of Discontinuance with a probation agreement. Board Counsel may be assigned by the Board as Hearing Officer. The parties will consult with Board Counsel before beginning negotiations. In this capacity, Board Counsel will take a more active role than the traditional Hearing Officer in assisting the parties to craft a probation agreement.

- **Consent Order**

If the allegations are so serious that the physician does not qualify for an Assurance of Discontinuance, the Board may recommend a Consent Order with a probation agreement. The Board will outline to Board Counsel any particular provisions it would like the probation agreement to contain. If a Consent Order is acceptable to the parties, they will consult with Board Counsel before beginning any negotiations. With Board Counsel's input, the parties will negotiate a proposed agreement. Board Counsel will review the proposed agreement and may make recommendations before the agreement is sent to the Board. While the parties and Board Counsel are encouraged to agree to probationary terms, it is possible that the parties may disagree with each other or Board Counsel about a particular term or terms. In such a case, the parties and Board Counsel may present their arguments to the Board, and the Board may provide further guidance.

Board Counsel serves an important role in expediting the processing of these cases before the Board and ensuring continuity and consistency in the application of the Board's policy. The parties are, therefore, encouraged to consult with Board Counsel for any reason at any time and on an ongoing basis regarding probation agreements. It should be noted that after a Statement of Allegations has been voted, Board Counsel will not have ex parte communications with the parties.

- **Final Decision and Order**

If an order of probation is part of the Final Decision and Order in a case, then the physician or his or her attorney will submit a motion with a proposed probation plan to Board Counsel and serve Complaint Counsel with a copy. Complaint Counsel will be

given seven days in which to respond with service of any response to the physician. Board Counsel will review the proposed plan and may make recommendations before the proposed plan is sent to the Board. Board Counsel will coordinate any changes or modifications recommended by the Board. Under ordinary circumstances, Complaint Counsel will not be expected to negotiate the terms of a probation plan with the physician or his or her attorney.

- **Reinstatement/Suspension**

The Board may order a period of probation at the time it favorably considers a petition for reinstatement or motion for stay of suspension. The physician or his or her attorney will then submit a proposed probation plan to Board Counsel. Board Counsel will provide Complaint Counsel with a copy of the proposed probation plan. Complaint Counsel will then have the opportunity to comment in writing on the proposed plan. If Complaint Counsel chooses to respond, he or she should submit any written comments to Board Counsel with a copy to the physician and his or her attorney. Board Counsel will review the proposed plan and may make recommendations before the proposed plan is sent to the Board. It is not contemplated that Complaint Counsel will negotiate any proposed plan with the physician or his or her attorney, unless the Board directly instructs Complaint Counsel to do so.

MODIFICATION OR TERMINATION OF PROBATION

Requests for modification of approved monitoring agreements by a physician should be submitted to Board Counsel. Board Counsel will then forward the documents and a recommendation to the Board in cases involving probation agreements or to the Complaint Committee in cases involving Letters of Agreement.

Monitoring

As part of the Board's further commitment to its Chemically Dependent Physician Policy, the Board will devote additional resources to monitoring compliance with the terms of probation agreements. The compliance functions may include on-site and office visits with physicians on probation, interviews with treating physicians, supervisors and caregivers connected with physicians on probation as well as regular communication with the Massachusetts Medical Society's Physician Health Program or other approved monitoring program.

The Board expects that the physician will take primary responsibility for ensuring compliance with his/her agreement. This responsibility includes assuring that required reports are submitted to the Board in a timely manner. In many cases, failure to comply with the terms of probation can be grounds for a finding of a probation violation and possible termination of probation. In addition, a physician's compliance with probation is taken into account by Complaint Committee, in the case of a Letter of Agreement, or by

the full Board in all other matters when a physician requests modification or termination of probation.

Probation Violations

The Chairman will appoint one Board member to be the Physician Health Designee, who will have the authority to make threshold decisions regarding all reports of non-compliance by physicians in any type of monitoring agreement with the Board or the Complaint Committee. If possible, the Designee should not be a member of the Complaint Committee or sit on any Committee designated by the Board to hear and decide cases of alleged probation violations. To assure full coverage of these situations, the Chairman may appoint a second member as an alternate to the Designee.

Board Counsel will conduct a preliminary investigation of any incidents of suspected or reported non-compliance. Relevant information will then be presented by Board Counsel to the Physician Health Designee for further guidance. If a determination is made by the Physician Health Designee that the physician may represent a threat to the public or may be in violation of his or her monitoring agreement, the case will be processed in accord with the Board's policy on probation violations.

SUMMARY

Whenever possible the Board prefers to assume a compassionate role in its approach to health problems physicians may experience that interfere with their practice of medicine. Always taking into account the paramount responsibility to protect the public, the Board has determined that with proper supervision, education and training, physicians who are identified as being capable of rehabilitation will be returned to practice with a period of probation. Of course, each case that comes before the Board will be treated on its own merits.

It is hoped that as this policy is implemented, it will continue to develop and meet the needs of the physician community while at the same time meeting the Board's duty to protect the public.